

STATE OF WASHINGTON**OFFICE OF
INSURANCE COMMISSIONER****BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF WASHINGTON**

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In the Matter of)	NO. D99-60
)	NO. D99-61
JOHN R. MCGINNIS)	NO. D99-62
McGINNIS INSURANCE, INC. and)	
EWING AND CLARK INSURANCE, INC.)	FINDINGS OF FACTS, CONCLUSION
)	OF LAW AND ORDER ON HEARING
Licensees.)	

TO:	John R. McGinnis	McGinnis Insurance, Inc.
	4241 - 11th Avenue NE, Ste. C	4241 - 11th Avenue NE, Ste. C
	Seattle, WA 98105	Seattle, WA 98105

Ewing and Clark Insurance, Inc.
4241 - 11th Avenue NE, Ste. C
Seattle, WA 98105

COPY TO: Deborah Senn, Insurance Commissioner
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Pursuant to RCW 34.05, 48.04.010 and WAC 10-08 and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Insurance Commissioner for the state of Washington on September 27, 1999 at the hour of 9:00 a.m. in the

Office of the Attorney General, Highway Licenses Building, 1125 Washington Street, Olympia, Washington.

Pursuant to Chapter 34 RCW, all persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. John R. McGinnis, McGinnis Insurance, Inc. and Ewing and Clark Insurance, Inc., appeared pro se (John R. McGinnis representing himself and the two licensed entities). The Insurance Commissioner ("Commissioner") was represented by the Attorney General and Assistant Attorney General Michael E. Grant.

NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Commissioner's Orders No. D 99-60, 99-61 and 99-62 should be confirmed, set aside, or modified. These Orders ordered that the insurance agent's licenses of John R. McGinnis, McGinnis Insurance, Inc. and Ewing and Clark Insurance, Inc. be revoked, for reasons specified therein.

FINDINGS OF FACT

Having considered the evidence and argument presented at the hearing, and the documents on file herein, the presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied.
2. John R. McGinnis is an individual who has been licensed as an insurance agent in Washington for 44 years. He has owned his own insurance agency since 1961.
3. Mr. McGinnis is the sole insurance agent affiliated with McGinnis Insurance, Inc., an insurance agency licensed in Washington and, apparently, is the sole owner of McGinnis Insurance, Inc. Mr. McGinnis owns one half of Ewing and Clark Insurance, Inc., with the other half being owned by a nonagent. Mr. McGinnis is the manager of Ewing and Clark Insurance, Inc. and is its only affiliated insurance agent.
4. Approximately 15 years ago, Mr. McGinnis' agency was audited by the Commissioner and no problems were discovered. Further, neither Mr. McGinnis, McGinnis Insurance, Inc. or Ewing and Clark Insurance, Inc. have ever had any disciplinary actions taken against them.
5. Mr. McGinnis is selling the accounts of McGinnis Insurance, Inc. and Ewing and Clark Insurance, Inc. to Combined. He intends, presumably after the sale, to dissolve McGinnis Insurance, Inc. and Ewing and Clark Insurance, Inc. It is his intent to never again be involved in management decisions. Rather, he intends to be hired by Combined as a producer for approximately 2 years and, as an affiliate of Combined, he would be selling life, group medical and also some property and casualty insurance and would be sharing commissions on new business only.
6. At hearing, the Licensee generally did not dispute the facts alleged by the Commissioner in her Orders Revoking License against himself and McGinnis Insurance, Inc. While he did not dispute that the facts alleged in the Order Revoking License against Ewing and Clark, Inc. occurred, he does assert, and there being no evidence to the contrary (except as set forth in Finding No. 14 below), it is here found, that these actions have nothing to do with Ewing and Clark, Inc. but instead involve only John R. McGinnis and McGinnis Insurance, Inc. Therefore, except where Ewing and Clark, Inc. is specifically named, the following findings of facts relate only to the actions of John R. McGinnis and McGinnis Insurance, Inc. It is only John R. McGinnis and McGinnis Insurance, Inc. which are referred to as the "Licensees" throughout these Findings of Fact, Conclusions of Law and Order herein.

7. In the case of Joseph Largen, the Licensees failed to return to this insured a return premium.
8. In the cases of Austin Wheeler, Action Electrical Services, Inc.; Harvey Rott and Evergreen. Tow, the Licensees failed to account for and pay promptly to the insurance company funds they received representing premium.
9. The Commissioner alleges that in the cases of Action Electrical Services, Inc., Protective Systems, Inc., Harvey Rott and Evergreen Tow, the Licensees diverted or appropriated to their own use funds received by them in a fiduciary capacity. The evidence, however, was inadequate to support such a finding.
10. In the case of Protective Systems, Inc., the Licensees failed to account for and pay to the premium finance company funds to which it was entitled and which the Licensees had received in a fiduciary capacity.
11. In the case of Audrey, Inc., the Licensees acted as agent for an insurance company without having been appointed as an agent by that company.
12. In the cases of Audrey, Inc. and Karl Oberacker, the Licensees purported to bind coverage with insurance companies that had not authorized them to bind coverage.
13. The Licensees repeatedly failed to reply promptly and in writing to inquiries of the Commissioner, through her examiner, relative to the business of insurance.
14. Premiums and return premiums were not always deposited in the separate account. Premiums were transferred to the operating account. Funds from the operating account were transferred to the separate account. Premium funds received by Ewing and Clark Insurance, Inc. - another insurance agency - were commingled with the premium funds of McGinnis Insurance, Inc. and John R. McGinnis. Insufficient evidence was presented to show how or why this occurred or what involvement Ewing and Clark Insurance, Inc. had in this matter.
15. The Licensees' files concerning insurance transactions were not kept in organized form.
16. While the Commissioner states that she is willing to accept the Licensees' assertion that the subject premium funds were not converted to the Licensees' personal use, and indeed it is not found in this proceeding that the Licensees converted any of the subject premium funds to their own use, it is found that the Licensees have demonstrated that they knowingly participated in violations of the Insurance Code or proper orders or regulations of the Commissioner and have shown themselves to be incompetent or untrustworthy or a source of injury and loss to the public.
17. Angelina E. Portacio, an insurance investigator employed by the Commissioner, appeared as the sole witness for the Commissioner. She presented her testimony in a clear, detailed and credible manner with no apparent biases.
18. John R. McGinnis appeared as the sole witness for himself, McGinnis Insurance, Inc. and Ewing and Clark Insurance, Inc. Mr. McGinnis presented his testimony in a clear, although not detailed, manner. He appeared to be credible and forthcoming about the factual situations resulting in the charges against him.
19. The Insurance Commissioner's Orders Revoking License, No. D 99-60 against John R. McGinnis and D 99-61 against McGinnis Insurance, Inc., are reasonable under these circumstances, are supported by the record of this proceeding and should be confirmed.
20. The Insurance Commissioner's Order Revoking License No. D 99-62 against Ewing and Clark, Inc. is not supported by adequate facts, therefore, it is not reasonable under these circumstances and should be set aside.

CONCLUSIONS OF LAW

1. By failing to return premiums to insured Joseph Largen, the Licensees violated RCW 48.17.480.
2. By failing to account for and pay promptly to the insurance company funds they received representing premium in the cases of Austin Wheeler, Action Electrical Services, Inc., Harvey Rott and Evergreen Tow, the Licensees violated RCW 48.17.480.
3. It cannot be concluded that the Licensees diverted or appropriated to their own use funds received by them in a fiduciary capacity in violation of RCW 48.17.480 and 48.30.190.
4. By failing to account for and pay promptly to the premium finance company funds to which it was entitled, and which they had received in a fiduciary capacity, in the case of Protective Systems, Inc., the Licensees violated RCW 48.17.480.
5. By acting as agent for an insurance company without having been appointed as an agent by that company in the case of Audrey, Inc., the Licensees violated RCW 48.17.160 and RCW 48.30.040.
6. By purporting to bind coverage with insurance companies that had not authorized them to bind coverage, in the case of Audrey, Inc., and Karl Oberacker the Licensees violated RCW 48.18.240 and RCW 48.30.040.
7. By failing to reply promptly and in writing to inquiries of the Commissioner, through her , examiner, relative to the business of insurance, the Licensees violated RCW 48.17.475.
8. By failing to deposit premiums and return premiums into their separate premium account, by transferring premiums to the operating account, by transferring funds from the operating account to the separate account, and by commingling premium funds received by Ewing and Clark Insurance, Inc. with their own premium funds, the Licensees violated RCW 48.17.600 and WAC 284-12-080.
9. By failing to keep their files pertaining to insurance transactions in organized form, the Licensees violated RCW 48.17.470.
10. By the above conduct, John R. McGinnis and McGinnis Insurance, Inc. has knowingly participated in the violation of, the Insurance Code or proper orders or regulations of the Commissioner within the meaning of RCW 48.17.530(1)(b) and have shown themselves to be incompetent or untrustworthy or a source of injury and loss to the public within the meaning of RCW 48..17.530(1)(h).
11. Pursuant to RCW 48.17.480, 48.17.160, 48.18.240, 48.17.470, 48.17.475, 48.17.600, 48.30.040, and 48.17.530 (1) (h), the Insurance Commissioner's Orders Revoking License Nos. D 99-60 and D 99-61 should be confirmed.
12. By virtue of the fact that 1) no evidence was presented that Ewing and Clark Insurance, Inc. was involved in any of the above activities and by virtue of the fact that 2) although half of it is owned, and it is managed, by John R. McGinnis, it is a separate corporate entity holding a separate insurance agency license, the Insurance Commissioner's Order Revoking License No. D 99-62 should be set aside:

ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law, to the effect that the Licensees, John R. McGinnis and McGinnis Insurance, Inc. 1) have violated RCW 48.17.480, 2) have violated 48.30.190, 3) have violated RCW 48.17.160, 4) have violated RCW 48.30.040, 5) have violated RCW 48.18.240, 6) have violated RCW 48.17.475, 7) have violated RCW 48.17.600

and WAC 284-12-080, 8) have violated RCW 48.17.470 and 9) have knowingly participated in the violation of, provisions of the insurance code and proper regulations of the Commissioner as contemplated by RCW 48.17.530(1)(b) and 10) have demonstrated themselves to be incompetent or untrustworthy or a source of injury and loss to the public within the meaning of RCW 48.17.530(1)(h), and have been so deemed by the Commissioner to be incompetent, or untrustworthy, or a source of injury and loss to the public as contemplated by RCW 48.17.530(1)(h), and to the effect that Order Nos. D 99-60 and No. D 99-61 should be confirmed,

IT IS HEREBY ORDERED that the Insurance Commissioner's Order No. D 99-60 that the insurance agent's license of John R. McGinnis be revoked is confirmed.

IT IS FURTHER ORDERED that the Insurance Commissioner's Order No. D 99-61 that the insurance agency license of McGinnis Insurance, Inc. be revoked is confirmed.

IT IS FURTHER ORDERED that the Insurance Commissioner's Order No. D 99-62 that the insurance agency license of Ewing and Clark Insurance, Inc. be revoked is set aside.

This Order is entered pursuant to RCW 34.05, WAC 10-08-210, RCW 48.04.010, RCW 48.17.530 and RCW 48.17.540.

This Order is entered at Olympia, Washington, this 16th day of December 1999.

PATRICIA D. PETERSEN
Chief Hearing Officer and Presiding Officer